IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10529 of 1994

For Approval and Signature:

MR.JUSTICE A.S.DAVE

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1	Whether Reporters of Local Papers may be allowed to see the judgement ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copyu of the judgement ?
4	Whether this case involves a substantial question of law as to the interpretation of the constituition of India, 1950 of any order made thereunder ?
5	Whether it is to be circulated to the civil judgte ?

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RR SONI - Petitioner(s)

Versus

GEB&1 &2 - Respondent(s)

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Appearance :

Shri S.P. Majmudar for the petitioner

Shri M.D. Pandya for the respondents.

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CORAM :MR.JUSTICE A.S.DAVE

Date : 16/06/2005

ORAL JUDGMENT

This petition under Article 226 of the Constitution of India is filed by the petitioner, who was working as a meter reader with the Gujarat Electricity Board (hereinafter referred to as 'respondent-Board'), with a prayer to quash and set aside order dated 22.8.1994 (Annexure “D”), by which, the petitioner is dismissed from service on the ground that the charges levelled against the petitioner qua chargesheet dated 8.11.1990 have been proved and the Enquiry Officer has found the petitioner guilty of those charges.

[1]It is the case of the petitioner that, on the basis of a statement of one consumer, the petitioner was chargesheeted on 8.11.1990 and the main charge against the petitioner was to help the consumer in tampering with the meter. Pursuant to the chargesheet dated 8.11.1990, the Enquiry Officer was appointed and, in spite of various opportunities given to the petitioner to represent his case, the petitioner has failed to avail such opportunities. Thereafter, on the basis of the report of the Enquiry Officer submitted to the Disciplinary Authority, show cause notice dated 27.7.1994 was given to the petitioner asking him to show cause as to why he should not be dismissed from service. The petitioner sought time to file a reply to the show cause notice and, accordingly, time was granted to the petitioner to file reply by order dated 16.8.1994.

The reply to the said show cause notice was submitted by the petitioner on 12.8.1994. The petitioner made various grievances including non-supply of enquiry report and how it had caused prejudice to the petitioner in submitting his reply. Even in the absence of a copy of the enquiry report, the petitioner made various grievances.

Shri S.P. Majmudar, learned counsel appearing for the petitioner, has specifically made grievance on the basis of the judgment of the Supreme Court in Managing Director, ECIL, Hyderabad v. B. Karunakar, JT 1993 (6) SC 1 [=AIR 1994 SC 1074] and asserted that failure to supply a copy of the enquiry report vitiates the enquiry and, therefore, the impugned order is contrary to law and violative of principles of natural justice. He has, further, submitted that, in the reply to the show cause notice, the petitioner has specifically raised this issue in paragraph 6 and the prejudice that might have caused to him. Therefore, according to Shri S.P. Majmudar, the impugned order dated 22.8.1994 passed by the respondent-Board is contrary to the principles of natural justice and suffers from the vice of audi-alterm-partem and, hence, it is a fit case to exercise the power under Article 226 of the Constitution of India.

Shri M.D. Pandya, learned counsel appearing for the respondent-Board, has submitted that the petitioner failed to point out any provisions of law under which it can be said that he is entitled to receive a copy of the enquiry report and, in spite of repeated opportunities being given to the petitioner, he has not availed of such opportunities and charges levelled in the chargesheet dated 8.11.1990 have been found proved in the enquiry report. Alternatively, he has submitted that even if the contention of the petitioner is upheld, he is not entitled to relief of reinstatement in view of the decision of the Supreme Court in N.T.C. (WBAB and O) Ltd vs. Anjan K. Saha, AIR 2004 Supreme Court 4255. Shri Pandya mainly relied upon paragraph 5 of the said decision. In

the aforesaid decision, the Supreme Court referred its earlier decision in Managing Director, ECIL, Hyderabad v. B. Karunakar, JT 1993 (6) SC 1 [=AIR 1994 SC 1074].

Having heard learned counsel for the parties and perused the record, it is evident from the record that show cause notice dated 27.7.1994 issued by the respondent-Board to the petitioner does not mention about furnishing a copy of the enquiry report in respect of the enquiry held by the respondent-Board against the petitioner. It is also evident from the record that, in the reply dated 12.8.1994, the petitioner has specifically raised a plea about the prejudice that might have caused to him on account of failure of supply of a copy of the enquiry report. However, the respondent-Board passed the final order making a note of sufficient opportunities given to the petitioner while proceeding with the departmental enquiry. However, the fact remains that the petitioner was not furnished a copy of the report and, to that extent, the departmental enquiry stood vitiated. In paragraph 30 of the judgment in Managing Director, ECIL, Hyderabad v. B. Karunakar, JT 1993 (6) SC 1 [=AIR 1994 SC 1074], the Apex Court held as under:

“Since the denial of the report of the Inquiry Officer is a denial of reasonable opportunity and a beach of the principles of natural justice, it follows that the statutory rules, if any, which deny the report to the employee are against the principles of natural justice and, therefore, invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject.”

In view of the above, irrespective of specific provisions in the statutory rules, the petitioner is entitled for supply of a copy of the enquiry report. The same position is repeated after the decision in Union of India &Ors v. Mohd. Ramzan Khan [(1991) 1 SCC 588]. Earlier, the Court fixed date of November 1990 and after pronouncement in Ramzan Khan case, if the delinquent is not supplied a copy of the report, it amounts to violation of principles of natural justice, to which, appropriate reliefs can be granted.

In the present case, the main grievance is non-supply of a copy of the enquiry report which is contrary to the principles of natural justice and, therefore, the impugned order dated 22.8.1994 is required to be quashed and set aside. However, so far as the main relief is concerned, the petitioner is entitled only to receive a copy of the enquiry report along with the show cause notice and to submit his written submissions against the findings of the Enquiry Officer. It is, therefore, directed that the respondent-Board shall furnish a copy of the enquiry report to the petitioner pursuant to the departmental enquiry held against him and the petitioner shall be entitled to submit his written submissions within two weeks from the date of receipt of such report. Thereafter, it will be open for the respondent-Board to pass appropriate orders in accordance with law. It will also be open to the respondent-Board to pass an appropriate order with regard to the interregnum period, that is, between the date of order of dismissal and the date of final order that may be passed by the respondent-Board afresh in accordance with law. Rule is made absolute to the aforesaid extent with no order as to costs.

[Anant S. Dave, J.]

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